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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 UNITED STATES OF AMERICA, et al.,

10 Plaintiffs,

11 v.

12 STATE OF WASHINGTON, et al.,

13 Defendants.
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CASE NO. CV 9213

Subproceeding No. 05-01

ORDER ON MOTION FOR A
PROTECTIVE ORDER

15 This matter is before the Court for consideration of a motion for a protective order filed by the
16 Port Gamble and Jamestown S’Klallam Tribes (“S’Klallam”). For the reasons which follow, this motion
17 shall be granted, but only in part.

18 The moving Tribes’ motion asks that discovery not be had with respect to two Requests for
19 Production (“RP”) presented by the Skokomish Tribe. RP No. 16 requests all documents of the Point No
20 Point Treaty Council (“Council”) from 1974 through 2003, during which time the Skokomish Tribe was a
21 member of that Council. RP No. 17 requests all documents, including tribal meeting minutes, relating to
22 the Skokomish Tribe and/or the Hood Canal crab and geoduck fishery since 1974. The S’Klallam
23 contend that these requests are improper because they are not written so as to seek relevant information,
24 and the time duration is overbroad. The Skokomish Tribe asserts in response that the two S’Klallam
25 Tribes cannot assert the rights of the Point No Point Treaty Council, a non-party to this action. The
26 Skokomish Tribe also argues that many of the documents within the requested production are directly
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1 relevant to the matter at issue in this subproceeding, namely the Hood Canal Agreement. The
2 Skokomish Tribe is a former member of the Council, but has not been allowed access to the historical
3 documents, which are in the possession of the Port Gamble and Jamestown S’Klallam Tribes.

4 The Court agrees in part with the moving Tribes that the two requests are overbroad, in that they
5 seek documents dating back to 1974, while the Hood Canal Agreement was not formed until 1982-83.
6 On the other hand, many of the Council documents now in the possession of the two S’Klallam Tribes
7 may well be relevant to the formation and construction of that Agreement. It is the actual relevance of
8 the requested documents which should be the focus of the inquiry, not their characterization as party or
9 non-party documents. Although the moving Tribes claim that the Point No Point Treaty Council
10 documents are their “property”, the Skokomish Tribe has limited its request to that time period when it
11 too was a member of the Council. The arguments before the Court do not adequately address why, at a
12 minimum, they should not be allowed access to the documents for inspection purposes.

13 As to RP No. 17, the Court finds that the request is also overly broad, but that blanket assertion is
14 not sufficient to justify protection of all possible documents within that production, many of which may
15 well be relevant.

16 The Court notes that the Skokomish Tribe has now filed a Motion to Compel, part of which
17 addresses these same two Requests for Production. Having found that it is the relevance of the
18 documents which should be considered, the Court now rules that the S’Klallam Tribes need not respond
19 to RP’s No. 16 and 17 until the Court has ruled on the motion to compel, and determined which
20 documents therein are relevant and must be produced. Accordingly, the motion for a protective order
21 (Dkt. # 112) is GRANTED IN PART and DENIED IN PART.

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23 DATED this 3rd day of June, 2005.

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25
26 s/ Ricardo S. Martinez
RICARDO S. MARTINEZ
27 United States District Judge

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